

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Billed Party Preference for)
InterLATA 0+ Calls)
_____)

CC Docket No. 92-77

To: The Commission

REPLY COMMENTS OF C.U.R.E. ON PETITIONS FOR RECONSIDERATION

Citizens United for Rehabilitation of Errants ("C.U.R.E."),^{1/} by its attorneys and pursuant to 47 C.F.R. § 1.429, hereby submits its reply comments on various petitions for reconsideration of the Commission's Second Report and Order and Order on Reconsideration^{2/} filed in the above-referenced proceeding.

As indicated in its own petition for reconsideration, C.U.R.E. strongly supports the Commission's efforts to ensure that all consumers, including those who receive collect calls from monopoly inmate telephones, are protected by full and complete oral price disclosures.^{3/}

C.U.R.E. urges the Commission to reject the proposals of several commenting parties who seek

^{1/} C.U.R.E. is a national, non-profit organization dedicated to promoting the reduction of crime and the rehabilitation of offenders through reform of the nation's criminal justice system. C.U.R.E.'s membership includes current and former inmates, their families and friends, Federal, state and local legislators, religious and civic leaders, affiliated non-profit charitable organizations, and others interested in promoting the rehabilitation of inmates through reform of our nation's penal system.

^{2/} In the Matter of Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Report and Order and Order on Reconsideration, FCC 98-9 (rel. Jan. 29, 1998) ("Second Report and Order").

^{3/} See Petition for Reconsideration of C.U.R.E., CC Docket No. 92-77 (filed Apr. 9, 1998) ("C.U.R.E. Petition") at 8-9.

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to narrow the scope of the Commission's new disclosure requirements in a manner that would deny consumers who receive calls from inmate telephones the same protections afforded other billed parties who incur charges for collect calls made from payphones.

Specifically, C.U.R.E. disagrees with the comments of U S WEST that requiring real-time oral price disclosures for inmate calls will exacerbate the problem of high costs.^{4/} C.U.R.E. also disagrees with those who have commented that a clarification of the Commission's oral price disclosure rules for inmate calls is unnecessary.^{5/} In addition, C.U.R.E. disputes the notion offered by commenting parties that the Commission does not have the authority to require carriers to provide copies of their tariff filings to the correctional facilities they serve,^{6/} or to mandate that the time spent making oral price disclosures may not detract from limited inmate calling time.^{7/} Finally, C.U.R.E. concurs with the comments filed by Gateway Technologies, Inc. ("Gateway") that state-imposed rate ceilings for inmate local or intraLATA calls do not prevent inmate payphone service providers ("inmate PSPs") from receiving "fair compensation," as required by Section 276 of the Communications Act.^{8/}

^{4/} See Comments of U S WEST, Inc., CC Docket No. 92-77 (filed May 6, 1998) ("U S WEST Comments") at 5; see also Petition for Clarification or Waiver or, in the Alternative, for Clarification and Reconsideration of U S WEST, Inc., CC Docket No. 92-77 (filed Apr. 9, 1998) ("U S WEST Petition") at 17.

^{5/} See Comments of the Inmate Calling Service Providers Coalition on the Petition for Reconsideration of Citizens United for Rehabilitation of Errants, CC Docket No. 92-77 (filed May 6, 1998) ("ICSPC Comments") at 3-4; U S WEST Comments at 5.

^{6/} See ICSPC Comments at 3; Comments of MCI Telecommunications Corporation, CC Docket No. 92-77 (filed May 6, 1998) ("MCI Comments") at 4-5.

^{7/} See ICSPC Comments at 3; MCI Comments at 4.

^{8/} See Comments of Gateway Technologies, Inc., CC Docket No. 92-77 (filed Apr. 30, 1998) ("Gateway Comments") at 5-7.

I. THE FCC'S ORAL PRICE DISCLOSURE RULES SHOULD PROTECT ALL CONSUMERS AND APPLY EQUALLY TO ALL CARRIERS, INCLUDING THOSE SERVING CORRECTIONAL FACILITIES

C.U.R.E. agrees with the comments of Gateway that real-time oral price disclosure requirements provide "important and substantial benefit[s]"^{9/} to all consumers, including the recipients of inmate calls. As Gateway has correctly observed, immediate and complete rate disclosures not only enlighten billed parties as to the nature of the applicable charges before they accept a call, they provide the recipients of inmate calls with important information that allows them to make informed judgments (consistent with their personal budgets) as to whether to accept collect calls from inmates, and, if so, to help control the cost of such calls by limiting their duration.^{10/} Real-time oral rate disclosures make significant contributions to the level of service and protection afforded to all recipients of inmate calls.

In its petition for reconsideration and comments filed in this proceeding, U S WEST suggests that requiring all carriers to provide real-time oral rate disclosures for inmate calls will only exacerbate the problem of high costs.^{11/} U S WEST therefore requests that the FCC not apply the same rate disclosure obligations on inmate operator service providers ("OSPs") that it places on all other providers of OSP services, and that the Commission address specific inmate rate complaints on a case-by-case basis.^{12/} U S WEST's claim is both inaccurate and inappropriate and should be rejected.^{13/}

^{9/} Gateway Comments at 5.

^{10/} Id.

^{11/} U S WEST Petition at 17; U S WEST Comments at 5.

^{12/} Id.

^{13/} See Gateway Comments at 5-7.

Not only is U.S. West's argument unsupported by the evidence of record, it is undermined by the actual experience of another inmate services provider with four years of actual experience in this area. Specifically, Gateway has observed that it is able to provide real-time rate disclosures to all parties "while limiting its inmate service rates to a level *at or below* those of the dominant provider's tariffed rates."^{14/} U S WEST's unsubstantiated theory therefore merits no serious consideration.^{15/} Similarly, U S WEST's suggestion that the Commission address specific inmate rate complaints on a case-by-case basis should be rejected as contrary to the Commission's conclusion in the Second Report and Order that the recipients of collect calls from inmate telephones are worthy of the same oral price disclosure protections afforded other billed parties.^{16/}

Contrary to the positions taken by some of the commenting parties, it is also important that the Commission clarify that the same price disclosure rules that apply for all away-from-home callers apply equally to consumers who receive calls from inmate-only telephones. In their comments, the ICSPC and U S WEST both insist that the Commission's Second Report and Order is clear on its face that inmate service providers are subject to the same oral price disclosure rules as all other service providers, and that any difference between the language of Section 64.710 (the oral price disclosure rule for inmate OSPs) and Section 64.703(a)(4) (the oral price disclosure rule for all other OSPs) is insignificant.^{17/} It is difficult to understand, therefore,

^{14/} Id. at 6.

^{15/} U S WEST's suggested alternatives to requiring inmate carriers to provide real-time rate disclosures should also be rejected, as the carrier has itself acknowledged them to be inadequate. U S WEST Petition at 18.

^{16/} See Second Report and Order at ¶ 60.

^{17/} ICSPC Comments at 3-4; U S WEST Comments at 5.

why these parties would oppose an allegedly minor clarification that would have the beneficial effect of eliminating ambiguity and ensuring that the oral disclosure requirements apply equally to all consumers, including those who receive collect calls from inmate telephones.

While Section 64.703(a)(4) specifically states that oral price disclosures must include all surcharges and must be made at no charge to the customer, Section 64.710 provides only that OSPs serving correctional facilities must identify themselves before connecting the call and orally disclose how the consumer may obtain a rate quotation. Although this disparity appears inconsequential to ICSPC and U S WEST, C.U.R.E. fears that this difference may allow unscrupulous service providers to claim that the Commission never intended its oral price disclosure rules to apply equally to the recipients of inmate calls. Accordingly, C.U.R.E. submits that the disparity in language between Sections 64.710 and 64.703(a)(4) is not a “distinction without a difference,”^{18/} as suggested by the ICSPC. Rather, it is a potential loophole that could be abused by certain operators to the detriment of an already disadvantaged segment of consumers who deserve the protections afforded all other consumers. The Commission should make explicit the intent of its rules – as conceded by ICSPC and U S WEST – that oral price disclosure requirements apply equally to inmate phones.

C.U.R.E. also disagrees with those parties that state that it would be inefficient and inappropriate for the Commission to require carriers to provide copies of their tariffs to correctional facilities for the benefit of inmates, or to others upon request.^{19/} Contrary to the argument of the ICSPC, there would be a tremendous corresponding benefit to requiring carriers to provide copies of their tariffs to inmates and the institutions they serve. As C.U.R.E.

^{18/} ICSPC Comments at 4.

explained in its petition, inmates and their families are at a distinct disadvantage in reviewing tariffs, and are otherwise ill-equipped to determine the costs their calls will create.^{20/} Providing inmates with access to tariffs or other pricing information will contribute to their rehabilitation effort by promoting fiscal responsibility and assisting them in taking responsibility for their actions. This, in turn, will enable them to play an important role in family budgeting decisions and help them preserve ties to their families and communities.^{21/}

C.U.R.E. also disagrees with the arguments that have been made by some commenting parties that the Commission has no authority to require that the time spent making oral price disclosures not detract from the limited time in which inmates are permitted to complete their calls.^{22/} While it is true that the general duration of inmate calls is set by confinement facilities and not their service providers, C.U.R.E. is not requesting that the Commission exercise any authority over prison officials or change the amount of time in which inmates are permitted to converse with their families and friends. Rather, C.U.R.E. is concerned that without a specific requirement as to when the clock may start, various inmate service providers may have an incentive to elongate their oral price disclosures, thereby shortening inmate talk time and

^{19/} See ICSPC Comments at 4-6; MCI Comments at 3-4.

^{20/} C.U.R.E. Petition at 8-9.

^{21/} Id. In its comments, MCI indicates that copies of tariffs are already sent to all prison officials who request them, and, in some cases, are made available to inmates. MCI Comments at 4. In addition, inmate service providers are generally in regular contact with the correctional facilities they serve through the payment of commissions. It therefore stands to reason that, contrary to the claims of MCI and the ICSPC, requiring carriers to provide copies of their tariffs to all of the correctional facilities they serve would not create significant compliance burdens. In lieu of making available copies of their tariffs, carriers can also achieve the same objective by arranging to make their oral price disclosures heard by both the inmate and the party receiving the call.

^{22/} See ICSPC Comments at 3; MCI Comments at 4.

necessitating the placement of a second call. This, in turn, will generate more billing minutes for the service provider as well as the imposition of a second \$3.00 inmate service charge, all of which will have to be paid by the recipient of the inmate call. It is therefore important for the Commission to require that oral price disclosures not detract from limited inmate call time.

II. STATE-IMPOSED RATE CEILINGS FOR INMATE CALLS DO NOT PREVENT INMATE PSPS FROM RECEIVING “FAIR COMPENSATION”

In its petition for reconsideration, the ICSPC claims that state-imposed rate ceilings for inmate local or intraLATA calls that are based on standard incumbent local exchange carrier (“LEC”) 0+ collect calling service rates prevent inmate PSPs from receiving “fair compensation,” as required by Section 276 of the Communications Act.^{23/} According to the ICSPC, state rate ceilings prevent fair compensation because they generally do not cover the unique costs associated with providing telephone service to correctional facilities.^{24/} To “correct” this purported inconsistency, the ICSPC suggests that the Commission prescribe a \$0.90 “inmate calling system element” for all local and intraLATA inmate calls.^{25/}

C.U.R.E. concurs with the comments of Gateway that the ICSPC’s request for a Commission-mandated \$0.90 surcharge for all local or intraLATA inmate calls is neither supported by the evidence of record in this proceeding, nor mandated by Section 276. As stated by Gateway, itself an inmate PSP, there is no reliable evidence that intrastate inmate service rates are noncompensatory.^{26/} According to Gateway, “efficient inmate service carriers . . . are able to recover their costs and earn a viable margin by using the incumbent’s tariffed standard collect rate

^{23/} ICSPC Petition at 5-10.

^{24/} Id. at 6.

^{25/} Id. at 7.

as the inmate services rate for local and intraLATA calls.”^{27/} Permitting inmate PSPs to assess a rate of \$0.90 per call, in addition to the exorbitant rates they already charge, simply because some of them cannot meet the standards of their more efficient competitors, would be unnecessary. Inmate PSPs that are unable to recover their costs already have two readily available remedies: they may implement measures to become more efficient by lowering their costs, or they may seek to initiate a full cost proceeding at the FCC to demonstrate why they should be exempted from state-imposed rate ceilings under the particular circumstances.^{28/} Merely asserting generally that all service providers are unable to recover their costs under state-imposed caps, without providing any particularized evidence to support these claims, is insufficient to merit the relief requested.

The ICSPC’s claim that state rate ceilings contravene the “fair compensation” requirement of Section 276 is also misplaced. As Gateway has observed, the Commission has already rejected this position twice in its payphone proceeding, and there is no reason to think that raising the issue in the instant proceeding should yield a different result.^{29/} While the Commission’s rules require PSPs to be compensated for each and every call made from their payphones, the Commission has made clear that “whenever a PSP is able to negotiate for itself the terms of compensation for the calls its payphones originate, then [the FCC’s] statutory

^{26/} Gateway Comments at 9.

^{27/} Id.

^{28/} Id. at 10. C.U.R.E. would welcome the initiation of a full cost proceeding for inmate PSPs to help determine, once and for all, their true cost of providing service to inmate facilities.

^{29/} See In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Reconsideration, 11 FCC Rcd 21233, 21269 (¶ 72) (1996) (“Order on Reconsideration”); In the Matter of Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541, 20579 (¶ 74) (1996).

obligation to provide fair compensation is satisfied.”^{30/} Virtually all calls that originate from inmate phones are 0+ collect calls. Because the compensation scheme associated with these types of calls is generally established through contract, PSPs already receive fair compensation under Section 276. ICSPC has provided no reasonable basis for the Commission to disturb the rate ceilings established by various states.

State-imposed rate caps for inmate collect calls are important because they protect the integrity and competitive nature of the inmate telephone service industry. For example, as Gateway correctly points out, rate caps “glean[] out unscrupulous providers seeking to gouge ratepayers, and . . . appl[y] competitive pressures on inmate service carriers to increase their productivity and efficiencies to reduce their costs to maintain their profits.”^{31/} In the past, the Commission recognized that rate caps are vital to the protection of ratepayers and, therefore, preserved the right of states to impose such caps for local and intraLATA inmate calls. The Commission should do so again by denying the ICSPC’s Petition.

^{30/} Order on Reconsideration at ¶ 72.

^{31/} Gateway Comments at 10.

CONCLUSION

For the reasons stated above, the Commission should clarify its oral price disclosure rules so that all consumers, including those who receive calls from correctional facilities, are protected equally, and should reject any attempt by the ICSPC to turn this proceeding into a forum for reopening the debate on state-imposed rate ceilings for inmate calls.

Respectfully submitted,

CITIZENS UNITED FOR
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CERTIFICATE OF SERVICE

I, Ranya Sihweil, hereby certify that on this 18th day of May, 1998, a copy of the forgoing "Reply Comments of C.U.R.E. on Petitions For Reconsideration" was served on the following via U.S. mail unless otherwise indicated.



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